

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building

Philadelphia, Pennsylvania 19107

IN THE MATTER OF:

Belfield Avenue Site
Philadelphia, Pennsylvania

Robert H. Vernon

RESPONDENT

Docket No. III-87-27-DC

Proceeding Under Section 106(a)
of the Comprehensive Environ-
mental Response, Compensation,
and Liability Act of 1980,
42 U.S.C. § 9606 (a),
as amended by the Superfund
Amendments and Reauthorization
Act of 1986, Pub. L. No. 99-499,
100 Stat. 1613 (1986).

CONSENT AGREEMENT AND ORDER

This Consent Agreement and Order is made and entered into between the United States Environmental Protection Agency ("EPA") and Robert H. Vernon ("Respondent") pursuant to the authority vested in the President of the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Re-authorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators. This Consent Agreement and Order

AR100019

pertains to property located at 5236 to 5250 Belfield Avenue, Philadelphia, Pennsylvania described in the attached copy of the deed (Attachment A). The property will hereinafter be referred to as the "Site".

The actions taken pursuant to this Consent Agreement and Order shall be consistent with the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. § 300.65 ("NCP"). Notice of the issuance of this Consent Agreement and Order has been given to the Commonwealth of Pennsylvania.

EPA and the Respondent agree that settlement of this matter and entry into this Consent Agreement and Order are made in good faith in an effort to resolve concerns raised by the United States concerning the release or threatened release of a hazardous substance from the Site.

I. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is the owner/operator of the Site. The Site consists of a multi-story building on approximately one (1) acre of land bounded on two sides by private property, on the front by Belfield Avenue, and on the back by the SEPTA's Chestnut Hill East commuter rail line.

2. The Respondent is the owner of Visual Packaging, Inc. (VPI). VPI is in the business of mixing, packaging and wholesaling windshield cleaners, gasoline additives, fluids and other products. VPI occupies portions of the Site.

AR100020

3. Other portions of the Site are occupied by other commercial businesses including a rug designer, a furniture refinishing and repair business, Tangible Concepts, Inc., B & F, Inc. and a musical group.

4. On July 14, 1987, a fire and numerous explosions occurred at the Site. The Philadelphia Fire Department ("PFD") responded, contained, and extinguished the fire. The fire caused extensive damage to all floors and the roof of the building at the south end. One occupant of the building was in the building at the time of the fire and escaped after the initial explosion. The PFD has found evidence which indicates that the fire(s) was started by vandals/arsonists.

5. The EPA Region III Emergency Response Section received a request from the PFD to evaluate the Site on July 14, 1987, during the fire. A preliminary assessment was conducted pursuant to 40 C.F.R. § 300.64 by EPA's On-Scene Coordinator ("OSC") on July 15, 1987, with the assistance of the CERCLA Removal Enforcement Project Officer, the Office of the Philadelphia Fire Marshall ("PFM"), and EPA's Technical Assistance Team ("TAT"). They visually inspected the Site, and numerous vessels on the Site, to determine and identify the materials present at the Site, and ascertain the condition of the materials and vessels. Air monitoring for organic vapors was also conducted during the inspection.

6. Following the fire the Chief of the PFM determined that the Site presents a fire and explosion threat and so informed EPA on July 15, 1987.

7. The Philadelphia Department of Licences and Inspections

AR100021

("LI") determined that the building on Site is structurally unsound due to fire damage.

8. During the preliminary assessment conducted by EPA, numerous vessels containing tentatively identified and unidentified materials were found. Many of the vessels were overturned, damaged, "pillowed", breached, leaking and/or emptied of material.

9. Air monitoring on July 15 by EPA using an "Hnu" photoionizer, organic vapor meter and explosion meter showed levels of organic vapors in areas of the building ranging from 5 ppm to 100 ppm. Breathing-zone levels throughout much of the building were found to range from 5 ppm to 15 ppm.

10. EPA conducted interviews at the Site on July 15, 1987, with Respondent, and his son, John T. Vernon, Manager of VPI. During these interviews, EPA was informed that the following materials and products were kept at the Site: methyl alcohol, isopropyl alcohol, mineral spirits, methyl tert-butyl ether, solvents, dyes, paints, soaps, detergents, windshield cleaners, gasoline additives, power steering fluid, and petroleum products. In addition, numerous drums and vessels containing unidentified substances were stored on Site. These substances were tentatively identified by Respondent to contain epoxy resins, paints, solvents, petroleum products and other materials. The unidentified materials had been left at the Site for an indeterminate period by previous tenants.

11. The Respondent has stated that numerous attempts have been

AR100022

made in the past to contact the owner(s) of the unidentified materials to identify and remove the materials from the Site.

12. The known materials described above were used by Respondent to mix various products, which was the business of VPI. The label on the windshield cleaner indicates that it is flammable and contains methyl alcohol. The label on the gasoline antifreeze indicates that it is flammable and contains methyl alcohol. The label on the power steering fluid indicates that it is combustible and contains petroleum distillates.

13. Many of the materials described in paragraphs 10, 11, and 12 above, including but not limited to, methyl alcohol, isopropyl alcohol and methyl tert-butyl ether are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. Through information provided by Respondent regarding the identity of materials, the location of vessels, and amount of materials previously known to be in the vessels on Site, EPA was able to confirm that hazardous substances, had been released, or burned and/or were continuing to be released from the vessels. Materials that were released during the fire that were not burned are assumed to have been carried into the storm sewer system by water used to fight the fire.

15. Due to the fire and explosion threat as determined by PFM, the structural instability of the building as determined by LI, the unstable condition of vessels and the continued leaking of materials as observed by EPA, a release and/or threatened release of hazardous substances exists at the Site.

AR100023

16. The Site is located within ten (10) feet of a Commuter rail station, a public road, a business parking lot and a commercial business; within one hundred (100) feet of other commercial businesses; and within one thousand (1000) feet of numerous businesses and residential properties.

17. Methyl alcohol, methyl tert-butyl ether, mineral spirits and isopropyl alcohol are toxic to humans. Inhalation or ingestion of methyl alcohol can cause blindness. Inhalation or ingestion of isopropyl alcohol can cause kidney damage. Ingestion of Mineral spirits can cause central nervous system damage.

18. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. The presence of hazardous substances at, and the actual and/or potential migration of hazardous substances from, the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

21. The Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and is, therefore, liable for carrying out the provisions of this Consent Agreement and Order.

AR100024

II. EPA DETERMINATION

22. An imminent and substantial endangerment to the public health, welfare, or the environment may be present as a result of the release or threat of release of hazardous substances from the Site.

23. EPA has determined that the actions set forth below are necessary to protect public health and welfare and the environment.

III. RESPONDENT'S RESERVATION OF RIGHTS

24. The Respondent does not admit to the truth of the findings described above or agree with the determinations made herein. It reserves and retains its rights to controvert them in any subsequent proceedings, other than proceedings commenced by EPA to enforce this Order. Respondent specifically reserves its right to contribution from any other parties who may be responsible for actual or threatened releases of hazardous substances from the Site. Respondent, acting in good faith to protect the public health and the environment, agrees to comply with the terms and conditions of this Order and to take all actions required of it by this Order.

IV. PARTIES BOUND

25. This Consent Agreement and Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns, and upon all

AR100025

persons, contractors and consultants acting under or for the Respondent. No change in ownership nor corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibility under this Consent Agreement and Order.

26. In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing in advance of such change and shall provide a copy of this Consent Agreement and Order to the transferee in interest of the Site.

27. The Respondent shall provide a copy of this Consent Agreement and Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Agreement and Order.

V. WORK TO BE PERFORMED

28. Within forty-eight (48) hours of the effective date of this Consent Agreement and Order, the Respondent shall provide EPA with a Work Plan ("WP") for the following:

1. Twenty four hour (24) a day security of the Site sufficient to prevent, to the extent practicable, unauthorized entry to the Site.
2. Removal from the Site of all materials and products owned or used by the Respondent in the regular conduct of Respondents business that is salable, usable, reusable or recyclable as product. The Respondent shall provide to

AR100026

EPA, all information, including but not limited to, bills of lading and sale, delivery orders, receipts and/or manifests to verify the proper dispersal, in compliance with all applicable laws, of all such materials as usable product and the parties to whom it was delivered.

3. Identification, mapping and labeling, to the extent practicable, all materials, product or wastes on the Site.

4. Identification of owners of materials or products on Site that are not owned by the Respondent.

5. A Site safety plan to be followed during the course of work conducted pursuant to this Consent Agreement and Order. The safety plan shall meet all applicable regulations of the Occupational Safety and Health Administration.

6. A schedule for implementation of the actions required pursuant to this Consent Agreement and Order.

EPA shall review the WP and notify the Respondent of EPA approval of the WP or of changes necessary to make the WP approvable. In the event of EPA disapproval of the WP, Respondent shall make the necessary changes and resubmit the WP to EPA for approval within forty-eight (48) hours of notification of EPA disapproval.

29. The Respondent shall not dispose of any materials except as specified in the WP, or allow others to dispose of materials which are, or may be hazardous substances, or to dispose of unidentified

AR100027

materials without the prior consent of EPA. Any transportation, storage, disposal or other handling of materials from the Site shall be conducted in accordance with all Federal, state or local Laws and Regulations.

30. Respondent shall implement the tasks detailed in the WP in accordance with the standards, specifications and schedules set forth herein.

31. Within 48 hours of EPA approval of the WP, the Respondent shall commence implementation of the WP. The Respondent has been providing Site security since July 16, 1987, and will continue to provide Site security twenty-four hours a day.

32. The actions required in the WP shall be completed within fourteen (14) days of the effective date of this Consent Agreement and Order.

33. In the event that Respondent fails or refuses to comply with the terms of this Consent Agreement and Order, as determined by EPA, EPA may undertake such measures in lieu of Respondent, and take any other measures which EPA determines may be necessary to protect public health, welfare or the environment.

VI. ACCESS

34. Respondent shall permit EPA, its employees, agents, contractors, or other authorized persons to have access to the Respondent's property, as provided below, for any of the following reasons:

AR100028

a. to enter and freely move about those portions of the Respondent's property where work has been or is being conducted by the Respondent pursuant to this Consent Agreement and Order, at all reasonable times, including, but not limited to, any time that work is being carried out pursuant to this Consent Agreement and Order, for the purpose of observing the implementation of activities undertaken in accordance with this Consent Agreement and Order;

b. to perform actions EPA determines are necessary under Paragraph 41;

c. to obtain representative and/or split samples for hazardous substances testing and evaluation; and

d. to perform necessary actions should Respondent not perform such actions.

These rights of access are in addition to, and not in substitution for, EPA's inspection authority under applicable law.

VII. DOCUMENTATION

35. Documents, including reports, sampling results and other correspondence to be submitted pursuant to this Consent Agreement and Order shall be hand delivered or sent certified or express mail to the Project Coordinator.

36. The Respondent shall provide a copy of this Consent Agreement and Order to contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Agreement and Order within two days of the effective date of such retention.

AR100029

37. Any reports, plans, specifications, schedules, and attachments required by this Consent Agreement and Order and approved by EPA are incorporated into this Consent Agreement and Order. Any noncompliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Agreement and Order. Determinations of non-compliance shall be made by EPA.

VIII. DESIGNATED PROJECT COORDINATOR

38. On or before the effective date of this Order the Respondent shall designate a Project Coordinator ("PC"). The Project Coordinator for EPA shall be:

William D. Stenteville (3HW14)
USEPA Region III
841 Chestnut Bldg.
Philadelphia, PA 19107

Each PC shall be responsible for overseeing the implementation of this Consent Agreement and Order. To the maximum extent possible, communications between Respondent and EPA shall be directed through the PCs. EPA and Respondent each has the right to change its respective PC. Such a change can be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

During the course of Respondent's actions taken pursuant to this Order, the EPA PC shall have the authority to halt, modify, conduct, or direct any tasks required by this Consent Agreement and Order or portions thereof, or to take any response actions necessary if there is a threat to the public health, welfare or the environment as described in 40 C.F.R. § 300.65. The EPA PC shall have the authority to approve

AR100030

minor modifications to the Work Plan that may become necessary as the work progresses. Absence of the EPA PC from the Site shall not be cause for stoppage of work.

IX. FORCE MAJEURE

39. The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with the requirements of this Consent Agreement and Order. Said notification shall be made verbally as soon as possible but not later than forty-eight (48) hours after Respondent becomes aware of such delay or anticipated delay, and in writing not later than three (3) calendar days after becoming aware of such delay. The written notification shall state: (1) the nature of the delay; (2) whether and the reason why the delay is beyond the control of the Respondent; (3) the action that will be taken to mitigate, prevent or minimize further delay; (4) the anticipated length of the delay; and (5) a timetable for the action to mitigate, prevent or minimize the delay. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

Any delay that results from circumstances beyond the control of the Respondent that cannot be overcome by due diligence shall not be deemed to be a violation of the Respondent's obligations under this Consent Agreement and Order; nor shall it make the Respondent liable for the stipulated penalties contained in Section XI of this Consent Agreement and Order. To the extent a delay is caused by circumstances beyond the control of the Respondent, the schedule affected by the delay shall be modified to account for the delay resulting from such circumstances.

ARI00031

Increased costs of performance or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

The Respondent shall have the burden of proving that a delay was caused by circumstances beyond its control, and that the Respondent took all reasonable measures to avoid or minimize delay.

Failure of the Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and constitute a waiver of the Respondent's right to invoke the benefits of this section.

X. EPA RESERVATION OF RIGHTS

40. Nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, imposition of statutory fines, and/or punitive damages.

41. EPA reserves the right to take actions outside the terms of this Consent Agreement and Order and actions in addition to those specified in this Consent Agreement and Order, and to seek to recover the costs of such actions from Respondent. In addition, EPA reserves the right to seek reimbursement for any costs previously expended in response action at the Site.

XI. WAIVER

42. The Respondent hereby waives any rights it may have under Section 106(b) of CERCLA, as amended by SARA.

AR100032

XII. STIPULATED PENALTIES

43. If Respondent fails to perform any work or submit any reports as set forth in the Work Plan, in accordance with the schedule contained therein, Respondent shall pay into the Hazardous Substances Superfund, within five (5) calendar days of demand, the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substances Superfund and should be mailed to:

EPA - Superfund
P.O. Box 371003 M
Pittsburgh, PA 15251

Stipulated penalties shall accrue in the amount of \$100 the first week and \$500 for each week thereafter. The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to them by reason of the Respondent's failure to comply with any of the requirements of this Consent Order.

XIII. OTHER APPLICABLE LAWS

44. All actions taken under this Consent Agreement and Order shall be accomplished in a manner which complies with the requirements of all applicable local, State, and Federal laws and regulations.

XIV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

45. The effective date of this Consent Agreement and Order shall be the date on which it is signed by EPA. EPA shall provide the Respondent with immediate notice that the Order has been signed. This Consent Agreement and Order may be amended by mutual agreement of EPA

AR100033

and Respondent. Such amendments shall be in writing and shall become effective on the date on which such amendments are signed by EPA.

46. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules and other writings submitted by Respondent may be construed as relieving Respondent of its obligation to obtain formal approval when required by this Consent Agreement and Order.

XV. TERMINATION AND SATISFACTION:

47. The provisions of this order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that it has demonstrated, to the satisfaction of EPA, that all of the terms of this Order have been completed.

IT IS SO AGREED AND ORDERED:

United States Environmental Protection
Agency

Date: 7/24/57

By: [Signature]
James M. Seif
Regional Administrator
EPA, Region III

Date: _____

By: _____
Robert H. Vernon

AR100034